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# PARAMOUNTCY IN INDIAN POLITICS

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"Imperial necessity and new conditions may at any time raise unexpected situations. Paramountcy must remain paramount; it must fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the states".

—Indian States Committee Report—1928-9 (p. 31)

"It is the right and privilege of the Paramount Power to decide all disputes that may arise between States, or between one of the states and itself, and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests".

—Lord Reading's letter to the Nizam—1926.  
(Indian States Committee Report, pp. 18-9)

In India we are in the process of creating new political myths. The myth of independent Pakistans has already played havoc in the life of the country. The new myth of independent Rajasthans has now come forward to destroy the unity, independence, and security of the country as a whole. These ideas of home-lands and holy-lands of religious groups, and hereditary and conquered lands of princes have started a new process of political disruption in India which presages economic ruin, civil warfare, and foreign intrigue and rivalry in India. The British ruled India as a unitary whole, one part directly with their own officers, laws and administration; and other parts, indirectly—through the Princes who had administrative control over their territories but whose powers were circumscribed by the Residents and the Political Department of the Government of India. The word which expressed this relation between the Government of India and the Indian states or princes was "Paramountcy."

It meant the supremacy of the Government of India in all matters relating to Indian states which were only allowed certain powers of administration and government but which remained under its overriding control.

### **The Princes' Position**

The main conclusions, given in the opinion of the counsels who were consulted by the Indian princes regarding their legal and constitutional position at the time of the Butler Committee in 1928-9, are as follows :

- (i) In the analysis of the relationship between the states and the Crown legal principles must be enunciated and applied.
- (ii) The Indian states today possess all original sovereign powers except in so far as any have been transferred to the Crown.
- (iii) Such transfer has been effected by the consent of the states concerned and in no other way.
- (iv) The consent of a state to transfer sovereign rights to the crown is individual to that state, and the actual agreement made by the state must be investigated to see what rights and obligations have been created.
- (v) Such an agreement appears normally in a treaty or other formal engagement. An agreement to transfer sovereign powers is, however, capable in law of

being made informally. In such a case the onus is on the transferee viz. the Crown, to prove the agreement.

- (vi) The relationship of the Crown as the paramount power and the states is one involving mutual rights and obligations. It rests upon agreements, express or implied, with each state and is the same with regard to all the states. Paramountcy gives to the Crown definite rights and imposes upon it definite duties in respect of certain matters and certain matters only, viz., those relating to foreign affairs, and external and internal security. It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights, and the performance of such duties.
- (vii) The relationship is between the states on the one hand and the British Crown on the other. The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control.

These statements about the position of the Indian states vis-a-vis the paramount power have been fully refuted by the Butler Committee except the last which in effect maintains that the Indian states are in relation with the British Crown as such and not with the Government of India if it is not under British control.. It is

stated that the mutual rights and obligations created by treaty and agreement are between the states and the British Crown. The paramount power is the British Crown and no other, and it is to it that the states have entrusted their foreign relations and external and internal security. The treaty relations of the states are with the King in his British, or it may be, in his Imperial capacity, and not with the King in the right of any one of his Dominions. The contract is with the Crown as the head of the executive government of the United Kingdom under the constitutional control of the British Parliament, and not with any other.

### **Position Examined**

Indian states have thus put forward a number of propositions about their status and demands. They state that the relationship of the states to the paramount power is a relationship to the Crown and not to the Government of India. This proposition cannot be accepted historically, politically, or even legally. The British Crown has no "locus standi" in the Government of the country apart from its control of and connection with the Government of India as a whole. It is absurd to propound such a new theory of relationship which was not prevalent in the nineteenth century.

Their assertion that their relation with the Crown is merely a contractual relationship resting on treaties is not correct. Those treaties are merely assurances to Indian states of their rights

—as subordinate states, not as equals or as sovereign or independent states. None of the states have or can claim an international status. All of them were formerly subordinate or tributary to the Mughal or the Maratha empire or the Sikh Kingdom and were dependent on them.

They designate usage as sterile. But it is not so in actual fact. Paramountcy itself is a matter of gradual growth. It has been established not only by the process of conquest, of treaty-making, of “de facto” supremacy, but also by usage and political necessity for the security and tranquillity of the country.

According to them paramountcy gives the Crown definite rights and imposes on it definite duties in respect of certain matters only, namely, those relating to external and internal security and foreign affairs. It is not so. The good government of India as a whole implies good government in individual states. Then, states are not merely subordinate in military matters but also in political relations. Their position is regulated by the political law of a united India. Their relationship as it exists today is, according to the Butler Committee’s report, the product of change and growth. It depends on treaties, engagements and sanads supplemented by usage and sufferance and by the decisions of the Government of India and the Secretary of State for India embodied in political practice.

In external affairs Indian states have no international status and life. They cannot make peace and war, negotiate or communicate with



foreign states. For international purposes a state territory is in the same position as the British territory and state subjects as British subjects. Foreign states would hold the paramount power responsible if an international obligation were broken by an Indian state. Indian states are not only not allowed international relations but even interstatal relations in India.

Indian states demand that without their own agreement the rights and obligations of the paramount power should not be assigned to persons who are not under its control or to an Indian Government in British India. Such a Government would be a new Government resting on a new and written constitution. This demand and this view-point are not correct. It is not to the new Government of British India or democratic India that Paramountcy is going to be transferred. The new Government of India will not merely relate to or reorganize the government of British Indian provinces. It will create and be a new Government of India as a whole, of which Indian provinces as well as states will be parts or units. Otherwise the Government of Indian Union has no political as well as constitutional significance. No doubt Indian states should have a voice in the discussion and decision of their common interests and in matters of their common concern and necessity. But this cannot imply that there should not be a common Government for India as a whole of which they should form parts like provinces. It is a fundamentally mis-

taken assumption or view-point that the new Government of the Indian Union or Federation is going to be a Government of and for and by British India. This view implies the politically dangerous doctrine which is quite new that Indian states are independent and may remain aloof if they choose. The sooner they recognize the interdependence of Indian states and British provinces the better. The nature of control exercised by the Government of India over them may have differed in the past, but now both will have autonomy of the same kind, excepting only that in the case of provinces peoples' voice is supreme, and in that of the states the Princes' voice dominates. But the Butler Committee to please the Princes and to deprive the new Government of India as a whole of its political rights arrived at a very mischievous conclusion politically and constitutionally.

"We hold that treaties, engagements and sanads have been made with the Crown and that the relationship between the paramount power and the princes should not be transferred without the agreement of the latter to the new Government in British India responsible to an Indian Legislature."

This is a most mischievous suggestion. It is not that the Indian states are asked to join and merge themselves in British India, but both are to be parts of an Indian Union which will look after their common interests and leave them to look after their separate statal or provincial interests. If the goal of the Constituent Assem-

bly and of the British and of the Indians is not to create a common Government for India as a whole, then it is futile and misleading to say that an Indian Union or Federation is being created.

The position of the British is that Paramountcy as an overall power lies with the British Crown; the position of the Indian states is that it lies with the British Crown but it gives to the Crown definite rights and imposes upon it definite limits in respect of certain matters only, namely, those relating to foreign affairs and external and internal security. It does not confer upon the Crown any authority or discretion to do acts which are not necessary for exercise of such rights, and the performance of such duties.

Our position is that Paramountcy lies with the Indian Union or Federation, or the Government of India as a whole, and not with the British Crown as independent of the Government of India, nor with the states if power of the British Crown is withdrawn. It is not an affair between the Indian states and the British Crown apart from the Government of India as a whole.

### **Princes' Resolutions**

The fundamental propositions of the states are adumbrated in the following resolution adopted by the Standing Committee of the Chamber of Princes on the 29th January, 1947, on the question of Indian States' participation in the Constituent Assembly, and ratified at a general conference of the rulers :

- (i) The entry of the states into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each state.

The proposed Union shall comprise, so far as the states are concerned, the territories of only such states or groups of states as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.

- (ii) The states will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the states to the paramount power will return to the states. The proposed Union of India will therefore exercise only such functions in relations to the states in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers as have not been expressly delegated by it. There can be no question

- of any powers being vested or inherent or implied in the Union in respect of the states unless specifically agreed to by them.
- (iii) The constitution of each state, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the state shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a state be altered except by its free consent and approval.
- (iv) So far as the states are concerned the Constituent Assembly is authorized only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorized to deal with questions bearing on the internal administrations or constitutions of individual states or groups of states.
- (v) His Majesty's Government have made it clear in Parliament that it is for the states to decide freely to come or not as they choose. Moreover according to the Cabinet Mission's memorandum of May 12, 1946 on States' treaties and paramountcy, political arrangements between the states on the one side, and the British Crown and British India on the other will be brought to an end after the interim period. The void will have to be filled either by the states entering into a federal relationship with

the successor Government.....in British India or failing this, entering into particular political arrangements with it.

This resolution also assumes that the states are independent and will retain all powers not ceded or surrendered by them to the Union, and that Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India, and all rights surrendered by the states will return to the states. All these statements are historically and politically wrong.

### **The Correct Position**

The existing conception of the relationship between Indian states and the Government of India as a whole is one of union and co-operation with the paramount power on the part of the states. The Government of India is the paramount power because it has the capacity and possesses the responsibility for the defence and foreign relations, the tranquillity and good government of India as a whole. If the Government of India as a whole is not to be the paramount power in India, then, who is to defend and protect the subordinate states, who is going to prevent their quarrels and misrule, and who is to regulate their relations with other parts of democratic India? Again, if the Government of India is not to work as the central and paramount power, then who is going to defend India as a whole, who is to look after her international

affairs and relations, who is to promote and to preserve her economic interests and welfare, and who will prevent foreign intrigues in India if Indian states claim independence and sovereign rights? It is a new stand which has no historical reality and political justification.

Today some Indian states and provinces are claiming equality with the Government of India. They also claim sovereignty and independence separately. They claim treaty rights and legal relations as separate units on an equalitarian basis, and not as integrated parts of the Indian State as a whole. They claim residuary jurisdiction in case they concede certain powers to the Central power or join the Federation or Union. If they do not join or concede, they claim even the whole jurisdiction or sovereign and independent power. They base their theory of equality, sovereignty and independence on a theory or fiction of early conquest and hereditary descent. All these claims are historically and politically not correct. They are usurpations of parts of sovereign power when the Central power of Mughals and Marathas grew weak, and when they were supported in their rebellions by foreign European powers. But even then they have not been recognized as independent states in international law or the political law of India. Nor was such a status possible in the feudal-imperial state of India. In such a state Paramountcy is an over-all authority over these states. It is its permanent principle of self-defence. Its necessity lies deep-rooted in

its very internal structure and in the relations of its different parts. In matters of necessary and legitimate self-defence of India there are no questions of legality based on assumptions of the states' political independence and equality. Paramountcy is really a political "iron-ring" placed round India. It is India's "Monroe doctrine" of exclusion of foreign intriguers in India. It preserves the rights and interests of India, its security and tranquillity, and prevents internal misrule and separatism in its various parts.

In a feudal-imperial state the political problem is who is to possess and exercise the powers of primacy, supremacy and finality. Paramountcy fulfils that function and need. It becomes a regional concept of self-defence in a large feudal-imperial state whose unity and independence are to be maintained in relation to other foreign states. When political differences and disputes arise within such a state, how are they to be settled except with the help of this concept of Paramountcy? Interests of the democratic parts of India and of its princely parts will require many adjustments, settlements and arbitrations in a growing and complex world where old standards and values are upset, where old agreements and understandings are out of date and will prove of no avail. It is precisely here that the doctrine of Paramountcy will serve as the sanction and guarantee behind these adjustments, settlements and arbitrations. Therefore whoever rules from Delhi over India as a whole possesses the paramount power over all



her parts.

Sir Henry Sumner Maine says: "There does not seem to me the smallest doubt that if a group of little independent states in the middle of Europe were hastening to utter anarchy . . . the greater powers would never hesitate to interfere for their settlement and pacification in spite of their theoretical independence." (Maine: "International Law").

Thus the theory of interference or intervention is a recognized principle of international law. Paramountcy is not a principle of merely contract or give and take. It has its inherent justification in a political region which works as a unity in matters of security and foreign relations.

### **Sir C. P.'s New Claim**

Sir C. P. Ramaswami Aiyar, the Dewan of Travancore, made the following statement on the 16th March 1947: "The policy of the Travancore Government will be to prepare itself to take up the status and position of an independent kingdom from July 1, 1948. Travancore was never conquered or overrun by the British. Although the rulers of Travancore conceded certain powers of friendship in 1805, there was no question of conquest or assumption of suzerainty. The state will have to enter into treaties with the Government that will come into existence to regulate matters of joint concern, because India is one country. They have not yet decided whether to enter or not to enter into a treaty with

the Government of British India on the basis of or by utilizing the machinery of a Constituent Assembly.

“The Congress Working Committee’s resolution made it clear that the constitution framed by the Constituent Assembly would apply only to areas which accepted it.

“If that is the state of a province, and the Congress Working Committee is dealing with provinces, then the case with regard to States is “a fortiori” unassailable, specially with reference to a state which had never been conquered.”

Sir C. P.’s latest statement made on the 26th March 1947 is as follows :

“India should be one united country and I strongly disapprove of the limited centre which the Congress and Muslim League have accepted.

“With a weak central government India will not be able to attain the status of a strong international unit.

“A weak centre would result in a grave harm to the country. Food production, control and distribution would be a purely provincial subject under the Cabinet Mission’s plan, and the centre would have nothing to do with it. Any one with sufficient experience of the War would know that without a very strong Central power and jurisdiction, the problem of food can never be solved satisfactorily.

“He would gladly surrender his claim for Travancore’s Independence as soon as a strong Central Government was set up in India.

“Till such time as a strong centre is estab-

lished, my case is that Travancore should not be dragged into any scheme of things to which she is not a willing party.

“Travancore would be ready to come to common agreement with her neighbours in India and would not hesitate to reach agreement with foreign countries if necessary in the interests of the state’s security.”

The whole argument of Sir C. P. Ramaswami is based on certain assumptions such as (i) Travancore state was never conquered and therefore it is independent, (ii) it was an independent kingdom in 1795, (iii) certain powers of advice were ceded to the British in a treaty of friendship evidently on a basis of equality and not on that of any subordinate alliance, (iv) it may enter into a treaty with the Government of British India on the basis of equality or brotherhood, (v) if provinces can secede, much more so Indian states, especially if they are not conquered, and (vi) it is only on the basis that India is one that Travancore will have to enter into treaties with the new Government that will come into existence to regulate matters of joint concern.

Thus Sir C. P. Ramaswami Aiyer contemplates the form of Government of India as a whole to be a League of States, not a Union, Federation or Confederation of India consisting of various parts, the so-called British provinces and Indian states.

Sir C. P. Ramaswami Aiyar’s declaration of Travancore’s independence from June 1948 on

the basis of its independence before 1795 or 1805 is very mischievous. The treaty of Travancore with the British in 1805 (article 9) stipulated that "the prince would promise to pay at all times the utmost attention to such advice as the English government should occasionally judge it necessary to offer him." It also agreed to pay tribute to the British. It was a treaty of subordinate alliance in the interest of the security of India as a whole. The state accepted certain privileges of salute etc. on that basis. In 1795 the Company agreed to furnish three battalions of sepoys, besides European artillery and lascars to Travancore on basis of the subsidiary system and not that of equality or independence. In this way Travancore was extricated from the clutches of the Sultan of Mysore and its Raja agreed to pay a sum equivalent to the cost of the subsidiary forces maintained.

But Sir C. P. is arguing not only for Travancore but for other states as well, how many and which we do not know. On February 22, 1947, he stated: "As regards paramountcy, in June 1948 there would unfortunately be about 600 and odd independent entities in India which was an impossible position. The duty had been laid on Indian states to bestir themselves and reorganize their internal and external relations in such a way that there might be ten or twelve entities to negotiate with British India the predominant partner. The existence of Indian states in future would depend on how they put their houses in order, grouped themselves in such a way that

each group was more or less self-sufficient from the economic and political standpoints and entered into mutual relationship with the Central Government, if there was to be one Central Government or many such governments if there were to be more than one Central Government."

In the same statement he accuses the Congress of making a serious mistake in not insisting on an extensive and powerful Central Government. He wants a new Central Government of India with powers of supervision, control and co-ordination over the great all-India nation-building activities.

He says further that "the position of Indian states has been placed beyond controversy. British Paramountcy will last until the final transfer of power and will then automatically come to an end; but the intervening period will not be static as even in the interim period the relations of the states with the Crown will be adjusted by agreement and, after the final transfer of power, the states will become independent political entities, subject to agreements arrived at by negotiations with the new Government of the future which will finalize their position in the new Indian set-up."

Such a confusion of thought and view-points is not easily met. On one side to recognize the political unity of India and on the other to work for its destruction by propounding the doctrine of sovereign independence is only possible for ministers and sardars of states. It is confusing law and politics and false history into one argu-

ment. No doubt, Sir C. P. sees the danger of so many small states whom he asks to unite and group together for economic and political, internal and external purposes. He also sees the danger of a weak Central Government which he wants to be extensive and powerful. But still he argues for the independence and equality of some states or groups of states, both internally and externally on some historical considerations and on the theory of legitimacy of princely rule in the body politic of India. He is not influenced in his argument by the theories of democracy, sovereignty or rights of the people, and the fundamental political, economic and cultural necessity and desirability of the unity or Union of India. He wants to create a new theory of equal and independent states having treaties with the democratic provinces (or the so-called British India) for regulating their joint concerns or interests. To him along with the British rule over India as a whole Paramountcy as such withers away, and Indian states are left in the position of a Hobbesian state of nature—"bellum omnium contra omnes"—a war of all against all. This position seems to us untenable historically, legally and politically.

### **Cabinet Ministers' Statements**

Let us study the statements of the Cabinet Ministers on Paramountcy out of which these views of Sir C. P. have arisen (May 16, 1946):

1. There should be a Union of India embracing both British India and the States which

should deal with the following subjects : Foreign Affairs, Defence and Communications; and should have the powers necessary to raise the finances required for the above subjects.

2. The Union should have an Executive and a Legislature constituted from British India and States' representatives.

3. All subjects other than the Union subjects and all residuary powers should vest in the provinces.

4. The states shall retain all subjects and powers other than those ceded to the Union (para 15 of the Statement).

5. It is quite clear that with the attainment of independence by British India the relationship which has hitherto existed between the rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government (para 14 of the Statement).

6. A contract or arrangement of this kind [Paramountcy] can not be handed over to a third party without the consent of the states. They will therefore become wholly independent, but they have expressed their wish to negotiate their way into the Union (Sir Stafford Cripps's statement, May 16, 1946).

In the "Memorandum on States' Treaties and Paramountcy" of May 22, 1946 presented by the Cabinet Delegation to His Highness the Chancellor of the Chamber of Princes it is stated that there was no intention on the part of the Crown

to initiate any change in their relationship with the Crown or the rights guaranteed by their treaties and engagements without their consent, and that "during the interim period which must elapse before coming into operation of a new constitutional structure under which British India will be independent or fully self-governing, paramountcy will remain in operation. But the British Government could not and will not in any circumstances transfer paramountcy to an Indian Government."

"H. M. G. have been informed by the Indian states that they desire in their own interests and in the interests of India as a whole, both to make their contribution to the framing of the structure, and to take their place in it when it is completed."

"When a new fully self-governing or independent government or governments come into being in British India, H.M.G.'s. influence with these governments will not be such as to enable them to carry out the obligations of paramountcy.

"Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus as a logical sequence and in view of the desires expressed to them on behalf of the Indian states, His Majesty's Government will cease to exercise the powers of paramountcy. This means that the right of the states which flow from their relationship to the Crown will no longer exist and that all rights surrendered by the states to the paramount power will return to the States. Political arrangements between



the states on the one side and the British Crown and the British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into federal relationship with the succession government or governments in British India or failing this, entering into particular political arrangements with it or them."

### **Attlee's Statement**

Mr Attlee in the course of his statement on February 22, 1947 in the House of Commons said that as was explicitly stated by the Cabinet Mission :

"H.M.G. does not intend to hand over their powers and obligations under Paramountcy to any government in British India. It is not intended to bring paramountcy as a system to a conclusion earlier than the date of the final transfer of power, but it is contemplated that for the intervening period the relations of the Crown with individual states may be adjusted by agreement."

### **These Statements Examined**

There are a number of questions and also fallacies involved in these various statements. Let us formulate and examine them.

1. Is Paramountcy purely a British concern and connected with the British Crown and not with the Indian State as a whole?

2. Are the Indian states in any way independent and equal sovereign powers in the polity of India?

3. Are their treaties and engagements with the British Crown independent of the Government of India as a whole?

4. Is there not a Government of India as a whole separate from the so-called British India?

5. Is not Paramountcy connected with the Government of India as a whole and is it not its sole concern?

6. Are the Indian states to be divided into those conquered by the British and those who accepted British supremacy willingly?

7. Are there some independent states and some subordinate states in India?

8. Have the Indian states right of secession and independence?

9. Does Paramountcy arise out of any contract or cession made by treaty or agreement?

10. Is not the principle of Paramountcy inherent in the Indian State as a whole whose form is feudal-imperial?

### **Authoritative Statements**

This Paramountcy of the British power became an established usage and fact and its applications and assertions are seen in the Baroda Case of 1875, the Mysore rendition of 1881, the Manipur Case of 1891, and the Hyderabad case

of 1926. The Durbar of 1877 showed that the British power was paramount over all other powers in India which were protected by its sovereign rule. The British power in India was ultimately responsible for the welfare of the people. It is evident that the scheme or form of feudal-imperial Government of India was responsible for the growth of Paramountcy. It preceded the British conquest and may be reckoned amongst the chief causes for making British supremacy inevitable in India.

C. L. Tupper in his book "Our Indian Protectorate" says that in conceptions of sovereignty the British were the successors and heirs of both Hindu and Muslim rulers. The new Government of Indian Union will be their successor. It will be a succession or successor state. No doubt, from one point of view the Indian Government is at present a dependency of the British power, but from another and more important point of view it is the supreme government of conquered and ceded territories, and the paramount power dominant over a large assemblage of small and large feudatory estates and states. The aggregate of powers and privileges which make up its sovereignty may be divided into that which is exercised centrally in some respects over all the parts and that which is exercised fully over other parts directly.

### **The Baroda Case**

In the Baroda case of 1873-75 the Governor-General informed the Gaekwar as follows : "This

states, to preserve peace and good order throughout India.

“The right of the British Government to intervene in the internal affairs of Indian states is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed no desire to exercise this right without grave reason. But the internal, no less than the external, security which the ruling princes enjoy is due ultimately to the protecting power of the British Government, and where imperial interests are concerned, and the general welfare of the people of a state is seriously and grievously affected by the action of its government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility.

“It is the right and privilege of the Paramount Power to decide all disputes that may arise between States, or between one of the States and itself, and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests.” (ibid., pp. 18-19, 56-8):

This is the classic statement on Paramountcy and Paramount Power. It definitely shows that the primacy, supremacy and finality indicated by it lies with

the Government of India. Its decision is final. The word British Crown here represents the Government of India, and not any authority independent or unassociated with it. We have only to put the word Indian Union or Republic in its place and we get all what Paramountcy necessitates and implies in a feudal-imperial or feudal-federal state such as India is and is going to be. If any Indian state or Indian province sets up any claim of equality, sovereignty, or independence, it is a rebellious act, and may be due to the weakness of the Central power during its transition to a new form of government. It is not a Constitutional act. Treaties with Indian states are therefore merely unilateral acts of the Crown, setting a self-imposed limit on its inherent powers over the states. They are statements of these limitations. The residuary jurisdiction is with the Crown as the Government of India. Paramountcy is an unlimited reservoir of discretionary authority of the Government of India for the security, tranquillity and good government of India as a whole.

### **Ilbert's Opinion**

Ilbert traces British authority in India to a two-fold source. He says : "It is derived partly from the British Crown and Parliament and partly from the great Moguls, and other native rulers of India. Concessions granted by or wrested from native rulers gradually established the Company and the Crown as territorial sovereign in rivalry with other country powers,

and finally left the British Crown exercising undivided sovereignty throughout British India and Paramount authority over the subordinate native states." Ilbert further states that India was a complete stranger to the conception of an international law regulating the activities of a number of distinct, fully sovereign powers. History had accustomed it to the claims of universal sovereignty by the Moghul emperors. But when the reality of imperial power had passed away, it was possible for any ambitious officer to seek to establish his power, that is, paramount authority. (Ilbert : "Government of India," Introduction, p. 1.)

### **Keith's Opinion**

Lord Wellesley's object in acquiring paramount power was the security of the Company's possessions. In 1800 the Nizam accepted subordinate alliance under the subsidiary system and force. It denoted a status of superiority and inferiority. It meant the Paramountcy of the superior power. Lord Hastings brought all Indian states which were not annexed into effective dependence. Though the Moghul Emperor was left as a show and shadow, his disappearance after 1857 should be considered an event of great importance in Indian history. It made the direct sovereignty and Paramountcy of the British Crown or Emperor look natural and inevitable, since it contrived the "de facto" and "de jure" sovereignty and made the British Crown the sole wielder of it.

It is from 1858 that we do not hear of any international law as regulating the relations of the Company and Indian states. All were now dependent on the British power because the Emperor who had claimed to be a titular head superior of every state in India had been deposed and had disappeared. No doubt the paramount power of the Company had long been undisputed, but the nominal sovereignty of the Emperor had never been renounced by him. He considered himself the "de jure" Emperor. But now with his deposition or passing away, the British Crown as the holder of that power became in India what the Moghul Emperor once had been, that is, a completely sovereign power predominant over all others and claiming their allegiance. Thus Keith says the Crown succeeded to the whole authority of the Empire in so far as it chose to exert it, and the Crown, unlike the Emperor had means fully adequate to make effective use of its power.

Keith has stated the general principles which guided British relations with the states as follows :

- (i) Their foreign relations were entirely in British hands.
- (ii) Partly as a result of the duty owed to foreign states, partly in the interests of India as a whole, and partly in the interest of the welfare of the people of the states, the British Government was bound to take a certain measure of interest in the conduct of affairs

intervention, although amply justified by the language of treaties, rests also on other foundations. Your Highness has justly observed that the British Government is undoubtedly the paramount power in India, and the existence and prosperity of the native states depend upon its fostering favour and benign protection. . . . and he [Gaekwar] is responsible for exercising his sovereign powers with proper regard to his duties and obligations to the British Government and to his subjects." (Indian States Committee's Report, pp. 16-17).

### **The Manipur Case**

In a resolution of 21st August 1891 regarding the Manipur case (1891-2) the position of the British Government in relation to the Indian states was explained as follows: "It must be taken to be proved conclusively that Manipur was a subordinate and protected state which owed submission to the Paramount Power, and that its forcible resistance to a lawful order, whether it be called waging war, treason, rebellion or by any other name, is an offence, the Commission of which justifies the exaction of adequate facilities from individuals concerned in such resistance, as well as from the state as a whole. The principles of international law have no bearing upon the relations between the Government of India as representing the Queen Empress on the one hand and the native States under the suzerainty of Her Majesty on the other. The paramount supremacy of the former



presupposes and implies the subordination of the latter. In the exercise of their high prerogative, the Government of India have in Manipur as in other protected states, the unquestioned right to remove by administrative order any person whose presence in the state may seem objectionable." (ibid., p. 17)

### **Minto's Opinion**

Lord Minto in his Udaipur speech in 1909 had said : " Our policy is with rare exceptions, one of non-interference in the internal affairs of native states. But in guaranteeing their internal independence, and in undertaking their protection against external aggression, it naturally follows that the imperial Government has assumed a certain degree of responsibility for the general soundness of their administration and would not consent to incur the reproach of being an indirect instrument of misrule. There are also certain matters in which it is necessary for the Government of India to safeguard the interests of the community as a whole, as well as those of the Paramount Power, such as railways, telegraphs, and other services of an imperial character. But the relationship of the Supreme Government to the states is " one of suzerainty." (ibid., p.19)

### **Montford Report**

In the Montford report the position of Indian states and Paramount Power was stated to be as follows : " The states are guaranteed security

from without : the Paramount Power acts for them in relation to foreign powers and other states, and it intervenes when the internal peace of their territories is seriously threatened. On the other hand the states' relations to foreign powers are those of the Paramount Power; they share the obligation for common defence; and they are under a general responsibility for the good government and welfare of their territories." (ibid., p. 20).

The report recommended that a Chamber of Princes with a Standing Committee should be established, that political practice should be codified and standardized, that commissions of inquiry and courts of arbitration should be instituted, that a line of demarcation should be drawn between rulers enjoying full powers and those who do not, that all important states should be placed in direct political relations with the Government of India, and that machinery should be set up for joint deliberation on matters of common interest to British India and the Indian states. There is no question of independence of states.

In summing up the position of the Government of India with regard to Indian states, Sir Robert Holland, then officiating Political Secretary to the Government of India, said that there had been in the past a constant development of constitutional doctrine under the strain of new conditions as the British Power had welded the country into a composite whole. That doctrine, as for instance in the case of extra-territorial

jurisdiction, railway and telegraph construction, administration of cantonments and various other matters, had been superimposed upon the original relations of many states with the Crown, but had evolved in harmony with the needs of the Indian body politic and had not been inspired by any desire to limit the sovereign powers of the Indian rulers. The rulers' consent to such new doctrine had not always been sought in the past partly because it was often evolved piecemeal from precedents affecting individual states and partly because it would have been impractical to secure combined assent within a reasonable period. (ibid., p.21).

Thus all the fiction of cession or agreement relating to Paramountcy disappears as we study the actual genesis and process of its growth and its form.

### **Lord Reading's Letter**

Lord Reading in his letter (1926) to His Exalted Highness the Nizam asserted the following proposition : " The sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian state can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian

of each state. It was bound to secure proper conditions for British subjects who entered lawfully the states, and for foreigners. It exercised a control over successions, interposed its authority during minorities, could depose a prince whose misgovernment was exciting revolt, but would aid it on its own terms against unjust internal agitation.

- (iii) Each state was definitely bound to facilitate defence by affording to the British Government all necessary facilities in regard to the Indian army.
- (iv) In a few treaties the rulers had been required definitely to aid economic schemes for the welfare of the country.
- (v) The paramount power of the Crown resulted in the decision resting with it regarding the precedence and salutes due to the states and all matters of ceremonial.

Thus these states were to do nothing to endanger the security of India. Careful control was exercised over the production of arms in any state or the maintenance of forces likely to be a danger to the public peace.

In a feudal-imperial state all these attributes of Paramountcy are necessary. Keith says : "The essential fact of unity must prevail and the demands put forward by the spokesmen of the people are all of an easily defended nature."

### **Dodwell's Opinion**

Dodwell in his Chapter on the Development of Sovereignty in British India, says that the nominal sovereignty of Delhi prevailed everywhere. Sovereign powers over the Carnatic passed to the Company not by conquest, but by virtue of a long established political situation, in which the Company was in fact, though not in name, the overlord. Thus it became sovereign not by grant or contract or consent, but as a result of the logic of events, by the force of "de facto" sovereignty. According to Dodwell the theory of Mughal Sovereignty still stood, but a large breach had been made in it. The English had established themselves as an "imperium in imperio", with the right of doing themselves justice. As the "de facto" power it assumed all rights. The formal sovereignty still lay where it had been. But alongside the Emperor and the Nawab there had sprung up a body which not only possessed the sole military force in Bengal but had also conquered the province in 1763, had assumed the power of nominating the Nawab's Chief Minister and was now invested with the right of collecting the revenues. At that time neither the Company nor the Crown was prepared to lay claim to territorial sovereignty in India. It only enjoyed a special position. It was not till 1813 that the claim to sovereignty and Paramountcy was formally asserted. The Treaty of Paris (1814) placed the position of the English Government in India beyond question internationally. It refers specifically to British

sovereignty in India. Even Warren Hastings had early realized the necessity of Paramountcy in the political system and conditions of India. He wrote in 1722 : " The truth is that the affairs of the Company stand at present on a footing which can neither last as it is nor be maintained on the rigid principles of private justice. You must establish your own power, or you must hold it dependent on a superior which I deem to be impossible." ("Cambridge History of India", Vol. V, pp. 589-607).

This is the necessity and genesis of Paramountcy in India.

### **Two Policies**

Two policies were noticeable amongst Indian princes as alternatives after the Mughal empire. One was to declare their independence of the Empire, for example, as Tippu had done when he proclaimed himself Padshah in his own right. The other was to espouse the imperial cause and extend a personal domination under the shadow of the imperial name as Mahadji Sindhia sought to do from 1735. The English, however, took the stand of equality and independence at first and then supplanted the Mughal and princely sovereignty and themselves became superior and sovereign power . Their defeat of the Maratha powers as a whole in 1803 put the Mughal emperor into British hands and the British practically became an independent and superior power in India. The final defeat of the Marathas in 1818 and the Sikhs in 1848 com-

pleted that process. The Mughal emperor had already passed under the British protection in 1804 and after 1857 he was deposed and the show and shadow of his power disappeared. It was political expediency and necessity that compelled the British to extinguish the fiction of Mughal government and sovereignty and the so-called independence and equality of princes which they never possessed "de jure".

The historical sources of the Paramountcy of the British power in India are its conquest of the major parts and provinces of India, thus supplanting the previous superior or supreme Indian powers and succeeding to their rights and privileges and also their grants and concessions before they were finally conquered, liquidated, or subordinated. Thus it was based on the superiority of its own arms and on its military and political dominance throughout India. Therefore the British Crown became what the Emperor once had been. Paramountcy was not however a British assumption and possession on the basis of their conquest. Its possessor was new, but it was always there. (Keith: "A Constitutional History of India—Indian States", pp. 213-221).

### **International Law**

Writers on International Law agree that Indian states are protected dependent states, maintaining the most varied relations with the British Government under compacts with the East India Company, and acknowledging the supremacy of the British Government and admitting

its right to interfering so far in internal matters that the East India Company had become virtually sovereign over them. None of these states, however, held any political intercourse with one another or with foreign powers. The British shared in their sovereignty in every case without any exception whatsoever. (Travers Twiss: "Law of Nations", p. 27).

Writers on International Law have also stated that where there were no external relations there could be no international law, and that Indian feudatory states had no relation of this character except with the British Government in India. They had no rights of legation to any other government internal or foreign. They could not make peace or war. They were completely subordinate to the British Government in India. They were not independent political communities. Therefore their relations to the British Government in India were not diplomatic but political. It is only in internal matters that they enjoyed in varying degrees a large measure of autonomy in the nature of administration, jurisdiction and legislation. The great ends of Indian political law according to Tupper ('Our Indian Protectorate') are the maintenance of the supremacy of the paramount power whose guardianship is the security for the peace of the whole of the Indian Continent, the preservation of the feudatory states, and the assurance of freedom from gross misrule to the peoples of those states. Consequently they had no power of aggression or forming independent



alliances or treaties and no right to armaments, and they were to act in subordinate co-operation with the British Government in India, to acknowledge its supremacy and to help it in peace and war. The Government was bound to protect and defend them from all external enemies.

Professor Westlake in his "Collected Papers" says that these Indian states are subject to an ultimate jurisdiction of the British authority and are not within the purview of international law. They are not independent states. Hall in his "International Law" states the view that the treaties are merely unilateral acts of the Crown, setting a self-imposed limit on its inherent powers over the states.

According to Westlake the test of a State's independence in international law is not whether the state of which the condition is questioned has any foreign relations other than those determined for it by another state in the capacity of its protector, but whether its foreign relations, when determined in any way, are its own separate ones; in other words whether it is not a part of the determining state, sharing the foreign relations of the latter because they are of the whole of which it is a part. For all international purposes, at any rate, the whole empire including the protected states united to it, must be regarded as one nation represented by the British Government. The East India Company became the sole representative in all external intercourse during Lord Hastings's Governor-Generalship (1813-8). The isolation of the states

was the negation of their independent status. It is not by cession that the British Government holds Paramountcy over all Indian states, for with many of them there are no treaties. The imperial right is claimed as overriding even the letter of the treaties. It is by assumption or acquiescence that it is acquired. In International Law the empire is treated as a whole. Says Westlake: "Whenever a body presents itself externally as a unit, in every such case the term 'constitutional' may fairly be used to express whatever political relations, possessing any degree of fixity, exist between the smaller bodies or individual men that constitute the unit." The constitutional position of the Indian states is merely that they are separate parts of the British Dominion. To claim sovereign independence "the society must be a sovereign independent state, its internal control of all persons and things within its territory must be complete and exclusive and its external relations must be independent of the control of any other society." This conception is little in harmony with the feudal states in which the idea of dependence on a superior is more familiar and true than that of independent equality: "There can be no degrees of independence as those of sovereignty. A State is either an independent unit or it is not, and there is no half-way house." Their position does not differ in international theory from that of the individual state in a federal system. A state cannot indefinitely surrender its treaty

making power to another and at the same time retain its existence as a sovereign state.

Professor Westlake does not describe Indian states even as protected states, because an independent state is entitled to live its own life in its own way. ("Collected Papers on International Law", pp. 216-223).

### **Historical Growth Of Paramountcy**

Though there was no distinctly conceived theory or system of public law for the whole of India which could regulate the relation of all Indian parts—directly ruled or feudally governed; there was however an accepted fiction or convention of the supremacy of the rulers of Delhi, though in some cases and at some times it could not be enforced.

The British behaved as it suited them, sometimes professing to act under the nominal authority of the great Mughal, and at other times being guided by the exigencies of the time and the stern necessities of self-preservation. They sometimes recognized the imperial or paramount authority of Delhi emperors, at other times ignored them. But from 1798 they really fought for supremacy out of political necessity in order to preserve their interests. It was the necessity of their self-preservation. According to Aitchinson, it was really the campaigns against the Maratha chiefs from 1803 to 1805, which completely broke the Maratha Confederacy, brought the Mughal Emperor under British control (1804) and established once for all the

George Barlow stated in 1803 : " It is absolutely necessary for the defeat of the French designs that no native state should be left to exist in India which is not upheld by the British power; or the political conduct of which is not under its absolute control." It has been stated that irresistible pressure of events forced supremacy on the British Government. Similarly ~~we can~~ state that historically the same thing happened in the case of the Mughals and the Marathas and even the earlier empires. It will also be necessary in modern times. The Maratha demands of Chauth and Sardeshmukhi amounted to a claim to the political supremacy or Paramountcy of the whole of India. Similarly the designs and conquests of Mughal emperors in the north and south gave rise to it. After the defeat of the Marathas Lord Wellesley observed that the British power in India was placed in a commanding position with regard to other states "affording the only possible security for the permanent tranquillity and prosperity of the British possessions in India." General Wellesley in 1804 argued that "no permanent system can be adopted which will preserve the weak against the strong and will keep all for any length of time in their relative situations and the whole in peace, excepting there should be one power, which either by the superiority of its strength, its military system, or its resources, shall preponderate and be able to protect all." This the British Government in India wanted to become and did become. Lord Wellesley on

February 4, 1804 in a despatch to the Resident at Hyderabad wrote: "The fundamental principle in establishing subsidiary alliances with the principal states of India is to place those states in such a degree of dependence on the British power as may deprive them of the means of prosecuting any measures or of forming any confederacy hazardous to the security of the British empire and may enable us to preserve the tranquillity of India by exercising a general control over those states calculated to prevent the operation of that restless spirit of ambition and violence which is the characteristic of every Asiatic Government, and which from the earliest period of Eastern history has rendered the peninsula the scene of perpetual warfare, turbulence and disorder." According to him this can be prevented only "by the operation of a general control over the principal states of India established in the hands of a superior power, and exercised with equity and moderation through the medium of alliances contracted with those states on the basis of security and protection of their respective rights." (Quoted by Tupper.) Sir Charles Metcalfe wrote: "We have by degrees become the paramount state in India. In 1817 it became the established principle of our policy to preserve tranquillity among the states of India and we cannot be indifferent spectators of anarchy therein, without ultimately giving up India again to pillage and confusion."

"We are bound not by any positive engage-

ment to the Bharatpore State but by our duty as supreme guardians of tranquillity, law and right. . . . . we must interfere to prevent evils threatening the existence of the state itself or the general tranquillity of the country."

This is the genesis and justification of Paramountcy according to British statesmen and politicians who asserted it. They said that it rested on conquest, agreement, and usage, and the necessity, in the general interest, of keeping the peace in the country, and not on any particular contract, grant, cession or concession.

In 1855 Sir J. P. Grant in a minute argued that the right of annexation and interference rests among other grounds on the British having succeeded to the empire of the Mughals and to their duty of terminating incorrigible misgovernment in his dominions. Lord Dalhousie in his dealings with Satara and Oudh had claimed that the British Government was the successor of the Emperors of Delhi.

### **Nature And Need Of Paramountcy**

1. Paramountcy is not a purely British concern arising out of its conquests and supremacy in India. Nor is it connected with the British Crown as such. It is an inseparable attribute and function of the Indian State as a whole whose form is feudal-imperial. It is not a new political conception created by the British and the Indian princes to adjust their mutual relations. The actual form it assumes may be different, but it is a fundamental political cha-

characteristic of a feudal-imperial state. Paramountcy was there before the British and paramountcy will be there after the withdrawal of the British till the form and structure of the Indian State as a whole and its units or parts change into a genuinely federal state. The British Crown is at present merely the symbol of the political and legal sovereignty of India and the ceremonial centre of its union, and holder of its Paramountcy and suzerain rights, like the Emperors of old.

2. Indian states are in no sense independent and were never so before. They were parts of the Mughal or Maratha empire or earlier empires. They were either feudal estates or provinces feudalized, or early kingdoms feudalized. Some of them rebelled and achieved for the time being unrecognized independence, but they were never recognized as independent, equal and sovereign states in the political or feudal imperial law of India.

3. Treaties and engagements which Indian states entered into with the British were of the nature of subordinate alliances with the imperial or paramount power of India and not independent of the Government of India as a whole. They merely represented conditions on which the paramount Indian power would tolerate or acknowledge their existence and maintenance and not the conditions under which Indian states would accept the supremacy of the paramount power. Paramountcy is not a creation of con-

tract or cession. It is a power and function of a superior or imperial power in a feudal-imperial state.

4. There is and has always been a Government of India or the Indian State as a whole separate from centrally and directly administered parts by imperial officers and feudally and indirectly administered parts of provinces or estates by hereditary princes or officers.

5. Paramountcy is a sole concern and important function of the Government of India as a whole, call it now Indian Union or Indian Federation. Therefore there is no question of its being transferred to or retained with or withheld from any one. It is a necessary characteristic embedded in the functions of defence and foreign relations, security and good government of India as a whole. As it is not really vested in the British apart from that particular feudal-imperial form which the Government of India as a whole has assumed historically, so also it cannot be transferred to the various parts, provinces or principalities in which India is divided. They are in no sense sovereign and independent and equal. Parts which were annexed were annexed to, for and by the Government of India and imperially or centrally administered in the interests of security, tranquillity and good government of India as a whole. They were centrally absorbed. Over those which it was not considered necessary or desirable to annex were retained certain



overriding and interfering powers. Whenever an imperial Government of India as a whole came to be established and was powerful the Indian feudal states were regarded as subordinates and not treated as equals. This position was accepted by Indian states even though some of them possessed large powers in their parts. This has been their position in the Indian policy as a whole from early times. Historically sovereignty and Paramountcy always lay in the Central or imperial power in India. Therefore Paramountcy which is the power possessed by the Central power over feudal states or kingdoms cannot wither away when the British quit India and transfer power to the Indians. It will remain with the paramount power in India which will administer and govern Central subjects such as defence, foreign relations and affairs, communications, and currency. It cannot be transferred to Indian states. They never possessed it nor are entitled to it. The British cannot transfer it piecemeal to Indian states or provinces and thus destroy this feudal-imperial structure of the Indian state as a whole, and create a series of new independent and equal states in the body politic of India or the Indian Commonwealth.

6. We cannot divide Indian states into those actually conquered by the British but maintained under limitations and those who were not actually conquered but who surrendered or commended themselves to the protec-

tion of the paramount power in India by accepting the subsidiary system. Whatever may be the process by which Paramountcy of the superior and supreme power was acknowledged, they were not independent and equal before, either "de jure" or "de facto". They were similarly subordinate to earlier imperial powers. Their political existence and autonomous power were due to their being an integral part of an imperial India which was not a divided India. Similarly the present democratic provinces of India, the so-called British India, cannot claim any separate or independent existence from the Government of India as a whole. They are a part and parcel of this feudal-imperial or feudal-federal polity of a United India. There is no question of their independent existence apart from India as a whole. Both autocratic India in the form of autonomous principalities and democratic India in the form of autonomous provinces are a part and parcel of the Indian Union State.

7. There are not some independent states and other subordinate states in India. Only some possess more powers and others less. But all are limited in their powers and do not possess the essentials and attributes of sovereign independent states. They did not possess them before, or having lost or surrendered them to the Central paramount power, cannot now regain them when a transfer of Central power to another Central power is taking place.

8. The present Indian states and provinces do not possess any rights of secession and independence. They have never been integrated independent units who have only joined the Central Government or created any Central Government for certain common purposes. The boundaries of these states and provinces have not been fixed historically, politically or administratively. They are not isolated contiguous blocks of territories, but are scattered and mixed in many cases. Most of them are creations of rebellious chiefs or governors during the decline of Mughal and Maratha Central powers. Even then they owed allegiance and loyalty to these powers. They are heterogeneous in their composition linguistically, religiously and socially. Even Indian provinces are not all homogeneous and permanently fixed units of the Indian State. They possess a build and heterogeneous character. Really speaking all these states, provinces and areas are old administrative and feudal divisions and cannot be made into permanent and fixed, isolated and consolidated units. To them no theory of secession, independence, or accession can be applied. They cannot have any sovereign independence of their own.

The Indian State as a whole has always been a feudal-imperial state. It now wants to become a feudal-federal state. In such a state some parts are directly administered by, from, and for the Central or Imperial Government with its own officers. Others are ruled or admini-

nistered by hereditary princes, chiefs or Governors. This form of Government contemplates and implies a superior or imperial or federal part, and subordinate and feudal parts in a united whole, leaving aside a few rebellious and separatist parts. The subordinate parts are never independent or sovereign, fixed or equal in any true sense. No doubt in a feudal-imperial state sovereignty seems to be divided, or shared centrally and locally, but the parts are never permanent units and independently sovereign. It is the characteristic of such a state that the superior central part is always the only independent and the truly sovereign part representing and possessing the whole sovereign power which an independent unitary or federal State possesses. Other parts possess limited local and internal sovereignty, or more correctly, autonomy. The paramount power of the superior part limits and regulates the sovereignty of the subordinate parts. A close study of the Mauryan, Mughal and Maratha polities will make this essential characteristic of the feudal-imperial state of India clear. The present Anglo-Indian polity is of this feudal-imperial type and whatever may be the internal form of the government of the subordinate feudal parts and imperial or superior parts, it does not weaken our argument about the character of Anglo-Indian polity. It is the feudal-imperial relations of parts which are the essence of that polity.

In such a state there is and has to be one power which by its superior military strength

and its greater economic and human resources preponderates and is able to protect all. It not only has to defend India and to carry on its external affairs, but also to prevent encroachment of one part on any others and their separatist tendencies and to interfere in the administration of those parts in the interests of peace and good government of the people. The imperial government is a trustee of the whole in the full sense of the term. In the pre-British period the Mauryans, Mughals and Marathas carried out this responsible task when they dominated as the paramount power. The British established their superiority by defeating and destroying the central or imperial power of the Mughals and Marathas, and thus they became the preponderating or paramount power. Therefore Indian subordinate states in no sense are, and can never be, independent states according to the historical political law of India and according to the form of historical Indian polity which settles and establishes the relations of the superior and subordinate parts of that polity. It is only the Mughals and Marathas that aspired after and acquired imperial power over large parts of India. No others aspired or tried for this paramount position, much less succeeded in achieving it.

In historical development India as a whole has been the "Chakravarti-Kshetra" or the imperial domain and domination of one power. India has always been one and indivisible from that

point of view. It has been politically, and internationally, geographically and culturally one, though administratively and jurisdictionally has been divided into various parts and forms.

9. Paramountcy is a political conception arising out of political necessity in such a feudal-imperial or feudal-federal state. It is not based on any doctrine of equality of treaty-making states. It does not arise out of any contract or cession or concession made by feudal or subordinate states. Therefore it is not the concern of international law, nor is it any juristic conception regulated by any code of municipal or civil law of a country. The Indian State or polity as a whole requires a strong dominant and paramount political power for maintaining its political unity and independence, security and good government. Indian states cannot claim this position severally. They are feudal, not sovereign states. They are really the old provinces of the Mughal or Maratha empire, where either the old princes had retained some autonomous rights and jurisdiction, or the new governors and officers had become hereditary and powerful, but still owed allegiance to the central or imperial government. The British succeeded to the Maratha and Mughal empires by conquest and cessions. Hence the present Indian political system is not entirely new in its form and structure, though its administration may have been democratized to a certain extent. It is historically connected with the

Mughal and Maratha powers and is a continuation of their supremacy and is evolved out of it. Therefore the fundamental fact and basis of the polity of India as a whole is the maintenance of the predominant imperial or federal power. With it is to lie and to it is to be entrusted the guardianship of the peace of the whole India.

In a feudal-imperial state sovereignty is divisible and shared, but political independence is not. There can be only one independent sovereign power in India and that is to be the imperial or federal or Union Government. States and provinces are merely differently administered parts either autocratically or democratically.

10. Therefore the principle of Paramountcy is inherent in the polity of the Indian State as a whole whose form is feudal-federal or feudal-imperial. It is connected inseparably with the unity, tranquillity and good government of India as a whole. It arises out of the necessity of political security of a country. Its particular forms and present practices may change, but it has to continue out of necessity, assuming new forms and practices or usages to fulfil the essential political purpose in view, namely to regulate the affairs and relations of subordinate states amongst themselves and with the Indian State as a whole. It is inseparable from the sovereignty of the Indian State as a whole.

The Paramountcy in the shape or form in which it is possessed and exercised by the British Government may change under the new Union or Federal Government, but it cannot disappear or be transferred to any one else. As long as Indian states remain as feudal states, it will remain with the Government of India as a whole. When feudal states, and feudal conceptions and relations disappear it will disappear or merge in the sovereignty of the Federal State of India. Today we are not creating merely a new system of Government for British India but for India as a whole with the sanction of representatives of India as a whole. No argument or logic can change this fundamental fact or objective for which the Constituent Assembly is working.

Thus Paramountcy will arise or be assumed when the superior political power of the Indian Union or Federation will establish its supremacy over India as a whole and when subordinate parts or smaller units will not be allowed any independence or interference in matters of defence, security and foreign affairs of the country. It will represent a political relationship of the Central or superior government with the feudal and subordinate governments in India collectively as well as separately. It does not depend on any law or agreement, contract or cession, but is a matter of political necessity in a body politic which is feudal-imperial or feudal-federal.



### **Conclusions from the Above Discussion**

Therefore Paramountcy is a political conception and convention which cannot be transferred or surrendered to any one. It remains as an accompaniment of the sovereignty of the feudal-federal state of India as a whole. Indian states will be merely its subordinate parts. In the form of government which India as a whole would assume these states as its integral parts would be free not merely to regulate their own form of internal government, but also to take part along with other parts or units of India in making the form and constitution of the Central or Union Government under which they would live. They however cannot have any choice or freedom to remain outside or secede from the Union. All parts of India must join the Union. The theory of secession or independence in Indian political system is definitely wrong, as the Indian states have no inherent or acquired or implied right to independence from or equality with the Indian State as a whole. Paramountcy was never with the Indian states as they were merely subordinate parts or provinces of early empires before the British. It has never been with them during the British supremacy. It has been only during the weakness of the imperial power in the past that they have acted rebelliously and have temporarily usurped greater powers which did not belong to them.

The theory and practice of equality and independence of states implies a theory of bal-

ance of power in the political system and affairs of India. But there is no such theory and no such practice. Europe developed such a theory and practice gradually when European feudal states developed into nation-states. After the Peace of Westphalia in 1648 the idea of equality and independence of European states got established and therefore a system of International Law arose in Europe. The imperial power in Europe decayed and no longer functioned as dominant or imperial power. Europe became a congeries of independent and equal states and developed as such. But there is no such thing as international or interstatal law in the political system of India. The empire exists. There is merely a law of relationship of the superior state and subordinate states, unequal and dependent, with the principle of Paramountcy regulating it. The Indian political law denotes a system of dependant states owing allegiance to a superior state which represents India as a whole. Hence there is no fundamental system of treaties and alliances on a basis of equality in India. There is only a law of Paramountcy and subordinate alliances or treaties. Paramountcy is a right of general control and interference exercised over subordinate states by the Central State which is superior in power and looks after the peace, defence and good government of India as a whole, besides administering large parts of India directly under its own control. The Government of India as a whole is primarily a unitary conception and

therefore "Salus populi suprema lex" is the guiding consideration of its political law and system. The possibility of keeping peace lies only in the supremacy of one major or united power which prevents internal anarchy and misrule, external aggression and encroachment. Without its Paramountcy small states and estates have no chance of existence or stability. Paramountcy is the only possible and desirable method which can guarantee peace and security of the country as a whole as well as of its parts and their welfare. The Central Government cannot remain aloof and indifferent when anarchy and misrule prevail amongst these subordinate states, as they necessarily affect the security and tranquillity of the whole of India. India is an inter-dependent country closely bound in its economic and political, social and cultural life. Indian states cannot exist without the guardianship and protection of the Central and supreme Government of India.

India in International Law is one, not many. Indian states as such have no "locus standi" there. They form a part of India. They owe allegiance or loyalty to the Central Indian Government which is the paramount power. Their so-called alliances are subordinate alliances, their so-called treaties are merely conditions of their existence. The subjects of Indian States owe a double allegiance, one to their own ruler and the other to the Central Government of India.

**Fresh Questions**

There are further questions to be answered in connexion with the problem of Paramountcy, before we can estimate its importance and necessity in the politics of India.

1. Is there to be an All-India Union, or merely British India Union, or regional unions of some provinces or of some states? Are there to be one or more Unions or are all provinces and states to remain independent and sovereign individually or to form unions as they like without regard to the Union or Federation of India as a whole? Is there to be one India or many Indias politically and internationally?

2. Is the political sovereignty to lie and to be located in the people or the princes and communities in India?

3. What are to be the objectives of the Constituent Assembly?

4. How does the doctrine of the identity of the State affect the new succession State?

5. Are there rights of intervention in Indian political law and in International Law?

6. Do the Indian States want protection and for what purposes?

1. The British Cabinet's declaration is positive on the point that there should be one State on the basis of a United India. It is already there—a historically evolved state, economically and politically integrated. To disintegrate it will injure her in all ways. The declaration

says further: "The case for a united defence is even stronger. The Indian armed forces have been built up as a whole for the defence of India as a whole and to break them into two would inflict a deadly blow on the long traditions and high degree of efficiency of the Indian Army and would entail the gravest dangers.

"A further consideration of importance is the greater difficulty which the Indian States would find in associating themselves with a divided British India.

"We are therefore unable to advise the British Government that the power which at present resides in British hands should be handed over to two entirely separate sovereign states."

The Cabinet Mission therefore recommended as a basic form: (i) there should be a Union of India embracing both British India and States which should deal with the following subjects: Foreign Affairs, Defence and Communications and should have the powers necessary to raise the finances required for the above subjects;

(ii) the Union should have an Executive and Legislature constituted from British India and States representatives.

"In forming any Assembly to decide a new constitutional structure the first problem is to obtain as broad based and accurate a representation of the whole population as is possible.

"It is the intention that the States should be given in the final Constituent Assembly appropriate representation which would not, on the basis of calculations adopted for British India, exceed 93.

"The representatives of the sections and the Indian States shall reassemble for the purpose of settling the Union Constitution."

The tenor of the whole set of proposals is that the Indian people themselves are to frame the new Constitution of the Union and the states representatives are to take part in its settling and that there is to be one Union Constitution for the whole of India, and Indian independence is dependent on the new constitutional structure decided by the Indian people.

Lord Pethick Lawrence in reply to a question said that the Indian States had a special position and must be brought into the proposed Indian Union by negotiating between the Constitution-Making Body and the representatives of the Indian states. To a direct question whether certain princely states might choose to remain independent and stay out of the Indian Union altogether, he pointed out that their relationship with Britain was to terminate immediately upon the formation of the Union and that they had agreed to co-operate in forming the Union. Lord Wavell said that the proposals seek to arrange the means for the Indian States, great and small, to enter by negotiation into the polity of a united India.

Thus one finds that all authoritative speeches and proposals definitely intend and indicate to set up an independent Indian Government and not a number of Governments. It is to be one Government—an All India Union—and not the setting up of a number of completely independent states which are not linked together in any way. The Cabinet Mission's proposals do not agree to divide India into separate states. They assert that the responsibility for the army, navy and air force and for the defence of the whole of India in war must rest with one authority for the whole of India. The details of the new system of Government for India must be worked out by the people themselves. The states will have to enter into federal relationship with the succession Government in British India or enter into particular political arrangements with it. There is to be one India militarily, internationally and communicationaly.

2. All their proposals and arguments are based on the intention that the Constitution-Making power is to be given to the people and the political sovereignty is to lie and is located in the Indian people. It is not in the princes or particular communities, groups or parties that it lies. The very conception of one representative for a million people in the Constituent Assembly and in its sections and provinces, and also in states is fundamentally a democratic conception and not a feudal one based on any

equality of provinces and states irrespective of the number of people they contain. Here the states or provinces or communities are not primary units with equality of status and parity of representation.

3. The objectives of the Constituent Assembly are primarily the formation of the constitutional structure of the Union of India as a whole including all the provinces and states. The "objective" resolution of the Constituent Assembly as adopted unanimously on 22nd January 1947 is as follows:

"(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

(2) Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; . . . . . and

(4) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought,



expression, belief, faith, worship, vocation, association and action subject to law and public morality; . . . . . and

(7) Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations. . . . .”

These main parts of the “objective” resolution indicate definitely that India is to be conceived as one independent sovereign Republic, called Indian Union; that all the power and authority of the Union and all its parts are derived from the people; that fundamental rights shall be secured to all the people of India; and that the integrity of the territory of the Republic and its sovereign rights shall be maintained.

The states demand that without their own agreement the rights and obligations of paramount power should not be assigned to persons who are not under its control or to an Indian Government in British India. Such government is a new government. In this connexion it is necessary to understand the doctrine of the identity of the State in International law. Does a change in the constitution of a Government create a new State? The Government of India is not only of the British India but of the whole of India.

4. In International Law the succession State is not a different State. It is the same State. The personal identity of the State is retained, according to Hall, so long as it under-

goes no change which essentially modifies it from the point of view of international relations. No change is essential which leaves untouched the capacity of the State to give effect to its general legal obligations or to carry out its special contracts. It follows from this principle that internal changes have no influence upon the identity of the State. Therefore the withdrawal of the British does not destroy the identity of the Indian State, and the new succession State is the same in International law. A territorial independent sovereign community is able to assert its rights and to fulfil its duties equally well, whether it is presided over by one dynasty or another like that of the Mughals or the British, and whether it has the form of a monarchy or a republic. It is unnecessary that governments as such shall have a place in International law and they are consequently regarded merely as agents through whom the community expresses its will, and who, though duly authorized at a given moment may be suppressed at pleasure.

According to Hall "this dissociation of the identity of a State from the continued existence of the particular kind of government which it may happen to possess is not only a necessary consequence of the state person, but it is also essential both to its independence and to the stability of all international relations. If in altering its constitution a State were to abrogate its treaties with other coun-

tries, those countries in self-defence would put a veto upon change and would meddle habitually in its internal politics." ("A Treatise on International Law", 1924, pp. 20-23).

Even when internal change takes the form of temporary dissolution, so that the State, from either social anarchy or local disruption, is momentarily unable to fulfil its internal duties, personal identity remains unaffected. It is only lost when the permanent dissolution of the State is proved by the erection of fresh States or long anarchy.

The members of a federal State are excluded from the category of the states possessed of perfect independence. In the federal government the conduct of all external relations is confided to the Centre. There is no right of secession allowed. When there is no right of withdrawal from the federation they cannot make any separate peace. Similar is the position of feudal States in an empire or federation. Indian states included in the Indian Empire are not therefore subjects of international law. They are theoretically in possession of internal sovereignty and their relations to the British Indian Empire are in all cases more or less defined by treaties, but in matters not provided by treaties a residuary jurisdiction on the part of the Imperial Government is considered to exist, and the treaties themselves are subject to the reservation that they may be disregarded when the supreme interests of the Indian Empire are involved or even when the interests of the sub-

jects of princes are gravely affected. The treaties really amount to little more than statements of limitations which the Imperial Government, except in very exceptional circumstances, placed on its own action. States under the suzerainty of others do not possess any international capacity. They are parts of another state and have only those rights which are expressly granted them. These are Hall's views.

5. International law recognizes the doctrine of intervention in the affairs of independent states under certain conditions. The grounds on which intervention has taken place or upon which it is permitted may be referred to the doctrine of self-preservation, to the right of opposing wrong-doing, illegal and immoral acts, to the duty of fulfilling engagements. Much more so is the right of intervention possessed by the imperial state in the affairs of the feudal states in the interests of the common whole. The only power which can intervene is the imperial or superior power in the interests of security and good government.

6. The Indian states want protection. Who are to defend them and on what terms? They cannot be allowed to enter into separate negotiations or treaties with foreigners. Are they to be given or allowed independent treaty-making power? Are they to be allowed to assume an independent international position which they never possessed before? Are they not a part and parcel of the Indian Union? Just as British sense of security required their subordination, so also

Indian sense and need of security and good government would require their remaining a constitutional part of India, and India's intervening in their internal affairs. The right to intervene or violate the independence of a state exists when there is a just fear of an imminent danger to the security and immediate interests of one's government or the vital interests of a state are gravely menaced. The paramount principle of self-preservation comes into play. This question of intervention appertains more to the sphere of politics than to that of any law. The interested state itself decides on the extent of provocation and the imminence of peril. There is no line of law to decide this policy.

In India Paramountcy is in the nature of an iron-ring round India, a kind of "Monroe-doctrine" for India, as stated before. It is a principle in which the rights and interests of the United States of India are involved. The Indian continent because of the free and independent condition which it has assumed and wants to maintain is henceforth not to be considered as a subject for separate alliances or interference or intrigue by any foreign power. This claim of Paramountcy has been admitted or acquiesced in by Indian states. Hence it becomes a sort of regional understanding in International law.

Intervention is permissible in International law when undertaken by the general body of civilized States or concert of Powers. It has been repeatedly asserted and not questioned. It is much more necessary in a feudal-imperial or

feudal-federal state. Intervention has taken place not merely on grounds of order or self-preservation, but also on grounds of humanity to prevent practices shocking to humanity within the territory of another. Intervention has also been proposed in the interests of minorities. Similarly in India the Governor-Generals have been emphatic on the right of intervention in the affairs of native states to set right such serious abuses in a native government as might threaten any part of the country with anarchy or disturbance or misrule, and to assume the temporary charge of a native state in the event of there being sufficient reason for such a course of action. Canning and Elgin recognized it, if annexation was not to be the alternative. The political process in modern India is a two-fold process: one from feudalism to federalism, and the other from autocracy to democracy. Feudal states have joined in a permanent alliance or subordination to an imperial power which is transforming itself into a federal power, constituting various states into its component units. Within the States themselves their internal autocracy is developing into a representative and responsible democracy, either under limited monarchies or parliamentary provinces and the supreme Central Government working as a federal Union based on a voluntary agreement about the constitution among all the constituent parts.

In India the leading principle of federation, namely, the combination of local autonomy with

common defence, foreign affairs, communications, etc. is already working. The other powers of sovereignty are to be exercised by states entering the Union. In all these arrangements whether there is an actual federation or not the Central authority is charged with the common defence etc., and the units with the regulation of their local affairs, as is the case in federations. If states and provinces within an empire stand on the same level of civilized administration and life, then they tend to combine in Unions of a federal type.

The structure of the Indian State as a whole today consists in the direct administration of certain parts by a Central power which also looks after common defence, foreign affairs and other Central subjects and in a paramount control over a large number of other parts or states which enjoy varying degrees of internal sovereignty and personal rule, but no independence. Its fundamental principles may be stated as follows: (i) Defence and foreign relations to be entirely in the hands of the Government of India as a whole. (ii) Settlement of conflicts between various parts to be its function, (iii) Assurance of security, tranquillity and good government to all to be ultimately its fundamental political right and obligation, (iv) The "de facto" and "de jure" wielder of Indian sovereignty to be its chief characteristic. Just as small Indian states and estates are today confederating into regional groups, like the Deccan States' group, Western India, Gujarat and Rajputana States' group,

for their security, efficient government and welfare, so all Indian States and provinces or units have to federate and unite for the security of India as a whole, internal and external, and for her good government. For this purpose our compelling need and inspiring ideology should be that of a Federal Indian Union. Interstatal anarchy, and independence of each part is absolutely incompatible with this purpose. In the common interest of all, the Union authority must remain superior and paramount over individual constituent states or parts or units, and must be endowed with power to make itself effective in political, military and economic spheres. The establishment of peace and security in a given region or area of considerable extent requires the transfer of an irreducible maximum of power, military and economic, to an authority superior to that of any single component unit, part, or state. In such a large, historically united, and politically and economically homogeneous area, the rights of self-determination, of secession and accession are devoid of any meaning. The dependence of small states on great powers is more absolute now than ever before. This is the basic fact of the present international situation in economic, financial and military matters. Even independence of great States is a matter of degree. There is no right to political and economic isolation or neutrality even for great States. In India territorial integrity and political unity are essential and overriding needs in order to prevent internal anar-



chy and external aggression.

But today in India we are adopting a process of making new political myths of Pakistan and Rajastan, weightages and hostages, parities and minorities, thus splitting India into a number of ever-quarrelling rival units, a process of "*bellum omnium contra omnes*", that is, a war of all against all. Today independence does not mean unrestricted liberty. A plurality of parochial totalitarian independent States cannot be tolerated in the modern world. They are dangerous to neighbours and ruinous to themselves. Sovereignty has its own natural and national limits. Disruptive forces of self-determination of small groups cannot be allowed to work in a world getting united. In India the idea of statal and provincial or sectional independence must be abandoned as an anachronism which is both ruinous and mischievous. We must give up this mad process of making small prison-houses for an integrating and uniting humanity.

If the communal politics and princely machinations reverse this process of integration, union and co-operation on a large scale, India will not only be destroyed internationally but politically and economically; and conflicting international contacts and rivalries will be created in a split India as it happened in the eighteenth century. There will be many separate alliances and treaties created between Indian states and foreign States, and between Indian States themselves, each guaranteeing security to one against

the other and thus creating an intra-national anarchy.

Just as defence and foreign relations are the central points of Indian independence, so communications, currency and planning of heavy industries are the central points of Indian welfare. Unless the new federal Government of the Indian Union, namely, the succession State of a united India is in a position to defend India as a whole with its united resources in men and materials and to maintain internal security and common welfare, Indian independence will not be a reality. There will be no independence for India if India is split up into a number of units. The historical necessity underlying its development is that of both unity and independence, not one at the cost or sacrifice of the other. The maintenance of military force in the states or provinces of India as against the Indian Union would be not only inconsistent with Indian Independence but would completely destroy it. It would be like the international anarchy of Europe of the nineteenth and twentieth centuries, with civil war in each unit added to it. Any independent separate unions of some states or provinces will also be disastrous to Indian Unity and Independence. If some parts or groups want separate independences, then Indian unity will disappear, Indian independence will not come and Indian prosperity and security will not be established. Therefore Paramountcy of the Government of India as a whole over its feudal parts is necessary politically to achieve the security

and tranquillity of all parts of India and to give peace to and to create conditions of welfare for all parts. The peace and security of India are one and indivisible, and so also the Paramountcy of the Indian State is one and indivisible. The only thing of paramount importance in this peace and security of India as a whole is the determination of the appropriate constitutional relations of all its parts to one another and to the Indian State as a whole. Mr. Attlee in a statement made in 1939 defining the Labour Party's peace aims, said: "There must be an acceptance of the principle that international anarchy is incompatible with peace and that in the common interest there must be recognition of an international authority superior to individual states and endowed not only with rights over them, but with power to make them effective, operating not only in the political but in the economic sphere. Europe must federate or perish." If this is necessary for Europe how much more is it for India!

In spite of Russia's powerful state, there is one principle of Russian foreign policy which aims at establishing over the states bordering on Russia on the west, south-west and south some sort of a protectorate or sphere of influence through the agency of the Russian Communist Party or strong diplomacy. Her aim is to prevent these states being used as centres of intrigues against her. She wants control over them for two reasons:

(i) She is impressed by the need for defence in depth.

(ii) She regards the border States on the west at least as areas assisting towards the economic reconstruction of Russia.

Russia is securing a political hold over these border States which will enable her to fulfil the role she has adopted for herself, firstly as the predominant military power in the region, and secondly as the controller of the economy of these countries. She has even gone to the extent of annexing the Baltic States and parts of Germany, Poland and Finland.

India must federate or perish. There are two ways to unite. One is a legal constitutional change by negotiation. The other is civil war and revolution and defeat of separatist forces. This is the supreme problem of today in India.

The dominating fact of modern political life is that a modern government with its expanding preoccupation in the social and economic fields has shown a constant need for and a trend towards a greater centralization of powers, in order to enable the country as a whole to take its due part in necessary international regulation of trade, industrial conditions, communications and so on. In India, by reason of her artificially fostered religions, communalism and princely statism, we are witnessing a trend in the reverse direction. If that succeeds, India will be internationally destroyed. In all economic and

political matters India will not be represented as one union, but must seek separate representation on behalf of the constituent units—provinces and groups or states and groups—which are concerned with these matters. It will also mean that instead of one treaty between Britain and India covering matters arising from the transfer of power, a number of treaties will be necessary. Same will be the position in the international field of political relations and economic transactions.

The document of May 16 is deliberately and mischievously vague about the participation of the states in the Indian Union and in the Constituent Assembly. It however assumes that all states will come into the Union in one way or another. Moreover it declares that the old relationship between the Rulers of States and the British Crown will no longer be possible and that Paramountcy can neither be retained by the British Crown nor transferred to the new Government. This seems to mean that when the new Government of the Union comes into existence, the old treaties and engagements will lapse. This view of the Cabinet Mission about the future of Indian states vis-a-vis the Indian Union, i.e. the succession state, cannot be accepted. The doctrine of the identity of the State is against it. Only certain practices of Paramountcy which are out of date or unnecessary under new conditions or relationships may go, but the fundamental considerations underlying trea-

ties, engagements, usage, etc. cannot be considered to have lapsed altogether. They may be reconsidered and readjusted in the light of new developments in new forms. But the political and constitutional links cannot altogether be broken. It is not an armed revolution that is creating a new India. If any repudiation of old relationships is to be done, the new India can do it, not the Indian states who have played no part in the democratic politics of the country. But there is really speaking no problem of lapse or reversion of old relations. It is only a readjustment wherever necessary. Today the Indian State as such is not in the melting pot. It is only assuming democratic forms and relationships in its constitutional structure. Even in International law all old treaties, agreements and relations do not go overboard when there is an internal change in the constitution of a country. Moreover the so-called treaties with the Indian States are not treaties in the strict sense of international law. The bond cannot change. The relationship embodied in them may be adjusted by negotiation to suit the new constitutional form which the Union or Federal structure is taking. States are in no case geographically, economically, culturally and politically separate from democratic parts of India. All that the document of May 16 says about the actual position of the states in the new India is that there should be a union of India embracing British India and Indian states which should deal with certain subjects and that the actual position of the states

in the Union will be that they will retain all subjects and powers other than those ceded to the Union. The assured union powers and subjects must be ceded to the Union. They must "unionize" and "federalize".

There seems to be no doubt that all but the largest states will be forced by circumstances either to form administrative unions with neighbouring states, or to merge in some fashion with neighbouring provinces; but federate they must. They have no right, political or legal, to declare independence. Even if some try to remain independent or outside the Union because the Union Government is not strong enough to compel them to remain within, they will have to conclude particular political arrangements with the Union Government which is the successor Government. Unless the successor Government of a United India is able to hold all states together in the Union, and is endowed with all powers to that end so that the internal security no less than the defences of the country can be fully maintained, India's existence as an independent state will be little better than a dream. The maintenance of any military force in the states, for the states and by the states, and diplomatic relations with foreign states independently of the Union would be inconsistent with India's independence as a whole.

The Constituent Assembly is meeting definitely for creating a Union Government for the whole of India and not merely a Government for the provinces of India.

Sind's preparation for a declaration of her independence as a sovereign state can be considered definitely as an act of rebellion. There is no other term for it in the political and constitutional law of India.

The Act of 1935 also conceived of a Federation of greater India, namely the Indian provinces and the Indian states. The federating organism was neither to be the Government of British India nor autonomous provinces released from the central tie. The Federation was to create a "new state" and to derive its powers in part from the State and in part from the Central Indian Government consisting of provinces and thus to establish a United India, or Government of India as a whole, a greater India. The same objective is aimed at in the creation of an Indian Union of Indian provinces and states. It is not merely to be a Union of British Indian Provinces. It is to be of all parts, though the states have to be brought in by negotiation. It alone will be responsible for the defence, foreign relations and communications of India. Provinces and states cannot claim separate independences and sovereign powers. Paramountcy subordinates them and unites them.

### **H. M. G.'s Statement Of June 2**

In the Press Conference held on June 4, 1947 Lord Mountbatten, while explaining the new constitutional proposals, referred to the position of the Indian States in the revised constitutional set-up and declared that the British Government would not encourage



them to set up sovereign states, but at the same time they could not coerce them into joining one Constituent Assembly or the other. The existing agreements between the Government of India as a whole and the Indian States would have to be carried forward on a stand-still basis until new agreements were negotiated between them and the successor authority or authorities in India. Of course, the States would be free to join one Constituent Assembly or the other according to their choice, but it would be presumed that geographical considerations would play an important part in their decision. The States would be given every facility to negotiate as quickly as possible, and the quicker they made their decision, the better. The British Government could only do what was legally possible, but he thought the Indian States must be perfectly aware where their interests lay. The Crown Representative would help the States to make the necessary contacts with the Government of India and the respective Constituent Assemblies.

He also stated that the Indian States cannot enter separately as Dominions and there could be no negotiation between His Majesty's Government and the states. "We hand back Paramountcy and in the process we offer our services in helping them to make necessary contact with the Government of India and with the respective Constituent Assemblies to come together and make their agreement. But we are not actually going to enter into any fresh negotiations. We

are coming out of all our commitments. In the process of quitting power in India, we must try and approach it in as legally correct a manner as possible."

Lord Mountbatten further added that the Indian States were at liberty to send their duly qualified representatives to the existing Constituent Assembly or if they so desired, to the other Constituent Assembly envisaged.

These statements made on behalf of His Majesty's Government contain the following principles recognized in relation to the Indian States :

1. That the Indian States cannot enter separately as Dominions into the British Commonwealth.
2. That they would be free to join one Constituent Assembly or the other according to their choice.
3. Only two sovereign states would be recognized to whom the transfer of power would be made.
4. Paramountcy will lapse, but the existing agreements between the Government of India and Indian States will continue on a stand-still basis until new agreements are negotiated between them and the successor authority or authorities in India.
5. The choice of the States to join any one of the Constituent Assemblies would be based on geographical considerations.
6. They are advised to negotiate as quickly as possible these new agreements.

These principles show definitely that Paramountcy lapses only from the British Government as such, but finally remains with or reverts to the Government of India as a whole or to two Indian Governments which would come into existence if India were partitioned. But it does not rest with or belong to the States nor are they invested with it by any legal process. They never possessed it.

Sir C. P. Ramaswamy Iyer's fresh assertion of Travancore's becoming independent has no legal or political basis. It is only possible on the basis of military strength and economic resources it can develop, on a spirit of opposition to the Government of India engendered by its geographical position.

Our theory that Indian States are not sovereign independent states under Indian political law is fully supported by the above principles underlying the statements of His Majesty's Government. The contemplated partition of India does not make the states automatically free. Paramountcy does not come from below. It is imposed from above and belongs to the superior power or group which will be sovereign and independent.



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